

REMARKS

Election

Applicant hereby provisionally elects **Group I** (claims 1-23) drawn to a genetically modified plant cell **with traverse**. Applicant reserves the right to file one or more divisional application(s) directed to the non-elected subject matter.

Restriction Requirement

The Restriction Requirement alleges that the inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features. The Examiner requires that Applicant elect one of the following three inventions:

Group I, claims 1-23, drawn to a genetically modified plant cell;

Group II, claims 24-25, drawn to an isolated protein; and

Group III, claims 26-30 and 32-33,¹ drawn to an “obtainable starch”.

The Restriction Requirement asserts that the technical feature of Groups I-III appears to be a class 3 branching enzyme. The Restriction Requirement states that WO 01/70942 (“the ’942 publication”) discloses “a transgenic plant transformed with antisense constructs from starch branching enzyme I (a class 3 branching enzyme as defined in the specification...) from potato...” and thus concludes the special technical feature linking Groups I-III does not constitute a special technical feature under PCT Rule 13.1. Office Action at page 2.

Applicant respectfully disagrees and submits that starch branching enzyme I (BE I) is not a Class 3 branching enzyme. Indeed, as discussed in the specification, BE I from potato is a Class I starch branching enzyme. See specification at page 4, lines 16-18. Accordingly, Applicant submits that the ’942 publication does not teach a Class 3 branching enzyme.

The Restriction Requirement states that “each invention has features not required by the others.” Applicant respectfully submits that this is not the standard for Lack of Unity under PCT Rule 13.1. Nonetheless, the claims relate to a Class 3 branching enzyme with reduced activity.

¹ In a telephonic interview conducted on November 5, 2007, Examiner Page explained that Group III encompasses claims 32-33. See Interview Summary (PTOL-413) mailed November 28, 2007.

In light of the foregoing, Applicant respectfully requests that the restriction requirement be withdrawn in its entirety and Groups I-III be examined together. In the event the requirement is made final, and in order to comply with 37 C.F.R. § 1.143, Applicant reaffirms the election of Group I (claims 1-23) **with traverse** for the reasons set forth herein.

CONCLUSION

Applicant maintains that the restriction requirement is improper and that all pending claims, *i.e.*, claims 1-30 and 32-33, should be co-examined. If the Examiner believes that prosecution might be advanced by discussing the application with Applicant's representatives, in person or over the telephone, Applicant welcomes the opportunity to do so.

Respectfully submitted,

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